

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Date *Jan 31, 1995*

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: DEC -9 1994

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Code. You have stated that you are not a private foundation because you are an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

According to your Articles of Incorporation, you were incorporated in the State of [REDACTED] on [REDACTED]. Your application was filed with the District Director on [REDACTED], [REDACTED].

Your purposes as set forth in your Articles of Incorporation state the following:

1. To become the [REDACTED] to successfully complete circumnavigation.
2. To promote more awareness of diverse (non-Western) cultures through the eyes of an [REDACTED] sailor.
3. To publish the observations, discoveries and findings on all regions to be charted throughout the trip so that a wide diversity of people can learn through my experiences ([REDACTED]).
4. To learn and record ancient navigation techniques that are still in use by different island cultures.
5. To meet and study the navigational philosophies of [REDACTED], who is one of the last great non-Western navigators.
6. To educate [REDACTED] on the navigational accomplishments, history and tradition of non-Western cultures.

7. To establish an educational process through several avenues such as sailing clinics, seminars, lectures, videos, publications, forums and public televisions.

According to the information submitted in support of your application, you were established to sponsor your founder and President, [REDACTED], to be the [REDACTED] to sail solo around the world while researching ancient [REDACTED] navigational techniques. You plan to make the research information gathered available to the public at low cost or free whenever possible.

Section 501(c)(3) of the Code provides exemption from federal income tax for organizations that are organized and operated exclusively for religious, charitable, educational, or other specified purposes, no part of the earnings of which inures to the benefit of any private shareholder or individual.

According to section 1.501(c)(3)-1(a) of the Income Tax Regulations, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages in activities which accomplish one or more of the activities specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that in order to demonstrate that it is organized and operated exclusively for one of the purposes specified in section 501(c)(3), an organization must establish that it is not organized or operated for the benefit of private interests.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations defines the term "educational" as used in section 501(c)(3) of the Code to mean:

(a) The instruction or training of the individual for the purpose of improving his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

The case of Better Business Bureau v. United States, 326 U.S. 279 (1945), dealt with an organization formed for the mutual welfare and improvement of business methods among merchants so that the public could obtain proper and fair treatment with such merchants. The court held that the organization was not operated exclusively for educational and scientific purposes, because although some of the activities were educational, the activities were not exclusively educational. The court stated that the presence of a single non-educational purpose, if substantial in nature, would defeat exemption under section 501(c)(3) of the Code, regardless of the number or importance of the truly exempt purposes.

In est of Hawaii, a Hawaii Corporation v. Commissioner, 71 T.C. 1067 (1979), the Tax Court ruled that an organization relating to "est" programs involving training seminars, lectures, etc., in areas of intra personal awareness and communication which were conducted under licensing arrangements with a for-profit corporation, was not exempt under section 501(c)(3) of the Code. The court held that although the organization was educational in nature, it served the commercial purposes of the for profit corporation and, therefore, was not operated exclusively for exempt purposes.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. C.I.R., T.C. Memo. 1986-348, the Tax Court held that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victims. The court found that the family coma victim was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family of the economic burden of providing medical and rehabilitation care for their family member and, therefore, constituted inurement to the benefit of private individuals.

In the case of North American Sequential Sweepstakes v. C.I.R., 77 T.C. 1087 (1981), the Tax Court ruled that an organization established to conduct a skydiving exhibition based upon a novel form of skydiving in which its creators were interested and participated was not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. All of the organization's creators participated in the competition and the organization financially supported one of its teams' participation in an international competition. The court concluded that although the organization was operated in a manner that may have incidentally furthered educational purposes and advanced amateur athletics, it primarily served the private interests of its creators.

[REDACTED]

We acknowledge that making the research on ancient [REDACTED] navigational techniques available to the general public as developed by your founder and President, [REDACTED], is an educational activity within the meaning of section 501(c)(3) of the Code. The same holds true for any programs you undertake to educate [REDACTED] on the navigational accomplishments, history and tradition of non-Western cultures.

However, your primary purpose, as stated in your Articles of Incorporation and in the information submitted in support of your application, is to sponsor [REDACTED] in his attempt to be the [REDACTED] to successfully complete circumnavigation. [REDACTED] is your founder and President. He will receive a great deal of public recognition for attempting circumnavigation. He will receive a great deal more if he is successful.

While circumnavigation is a very legitimate and worthwhile undertaking, it is a recreational-adventure activity. In sponsoring and providing financial support to [REDACTED], you will be subsidizing his private recreational pursuits in his capacity as your president. It thus appears that you were founded and exist to further his personal interests. This is contrary to the provision of section 1.501(c)(3)-1(d)(ii) of the regulations that an organization must not be organized or operated to further the private interests of its members.

We further rule that you do not meet the operational test requirements of section 501(c)(3) of the Code because you are not "operated exclusively" for one or more of the purposes specified in section 501(c)(3) as set forth in section 1.501(c)(3)-1(c)(1) of the regulations.

Accordingly, you do not qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are not deductible under section 170 of the Code. You must file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days of the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request a conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will have to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it

will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the U. S. Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: [REDACTED]
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

cc: [REDACTED]
[REDACTED]

12/02/94

12/9/94